

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Eric S. Michlowitz, Elisa J. Sumner  
Assignee: Dell Products L.P.  
Title: A Process, a System and Software Architecture for Evaluating Supplier Performance  
Serial No.: 09/733,190 Filing Date: December 8, 2000  
Examiner: Jonathan G. Sterrett Group Art Unit: 3623  
Docket No.: DC-02826 Customer No.: 33438

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Austin, Texas  
October 10, 2007

**PRE-APPEAL BRIEF REQUEST FOR REVIEW AND STATEMENT OF REASONS**

Sir:

Applicant requests review of the Final Rejection in the above-identified application. No amendments are being filed with the request. This request is being filed with a Notice of Appeal. The following sets forth a succinct, concise, and focused set of arguments for which the review is being requested.

**CLAIM STATUS**

Claims 1 - 11, 14 - 16, 21 and 22 stand rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. Claims 1 - 3, 9, 12 - 14 and 21 stand rejected over Powers, U.S. Publication No. 2002/0040309 (Powers) in view of PRTM's Performance Management Group benchmarking service described in "Supply Chain Council presentation of May 12, 1999" (Reference C). Claims 4 -8, 10, 11 and 22 stand rejected over Powers in view of PRTM's Performance Management Group benchmarking service described in Supply Chain Council's Webpage Newsletter of November 1998 describing PRTM's Online Supply-Chain Benchmarking, Pages 4 – 5" (Reference A), "PRTM Webarchive.org webpage dated December 5, 1998" (Reference B), and "Supply Chain Council presentation of May 12, 1999" (Reference C), PRTM press release, "High-Tech Management Consultants PRTM Launch Online Benchmarking Company," March 1999, pp. 1-2 (Reference D), and PRTM press release, "University of Michigan/OSAT and The Performance Measurement Group Launch a New Benchmarking Initiative for the Automotive Industry," January 21, 2000 (Reference E) (all generally referred to as the PRTM documents or PRTM). Claims 15 - 20 stand rejected over the PRTM documents.

## REMARKS

### **Claims 1 – 11, 14 – 16, 21 and 22 are directed to statutory subject matter.**

When discussing the rejection of claims 1 - 11, 14 - 16, 21 and 22 under 35 U.S.C. § 101 as directed to non-statutory subject matter, the Examiner set forth:

Regarding independent **Claims 1, 9, 14 and 21**, the claims cite steps for providing an assessment of a supplier. The claims provide for a tangible result and a result that has utility, however the steps do not provide for a concrete result.

These steps would provide an output (i.e. a supplier rating) that is substantially different, depending on the individual that is utilizing the claim steps.

Thus, one individual using the claimed invention could realize a substantially different outcome than another individual, even assuming that they had the same experience with a supplier. Because the claims may be used as such to provide different outcomes, the invention as claimed does not provide for a result that is substantially repeatable, and therefore does not provide a concrete result.

Because **Claims 1, 9, 14 and 21** do not provide for a concrete result, these claims are rejected under 35 USC 101. **Claims 2-8, 10, 11 and 22** depend on **Claims 1, 9, 14 and 21**, they are also not statutory under 35 USC 101 at least for the reasons given above (Office Action, Pages 4-5).

However, the examiner has misstated the requirements for a claim to be statutory. It is respectfully submitted that the Examiner is misapplying the statutory requirement that the claims “produce a result that is substantially repeatable.” (Final Office Action dated July 10, 2006, page 3.) In the present application, the claims as a whole accomplish the concrete result of evaluating a supplier. Just because different individuals might provide different evaluations which would result in a different indicia of the supplier’s performance, this indicia is in fact “concrete” in that the same input by the same individual result in the same output. (See e.g., MPEP 2106(IV)(2)(c).) Accordingly, it is respectfully submitted that claims 1 - 11, 14 - 16, 21 and 22 are statutory.

### **Claims 1 - 3, 9, 12 - 14 and 21 are allowable over Powers in view of PRTM.**

The present invention generally relates to evaluating a customer’s suppliers. The invention teaches a method for electronically compiling analysis of a supplier’s performance from team members, the supplier and a team leader. The invention discloses several measures of efficiency of each supplier and further discloses reports to compare suppliers to other suppliers of the same, or similar, components. Additional reports can be generated to show historical trend of the supplier’s performance. An embodiment of the invention allows suppliers to review their final scorecards and compare their scorecards to other suppliers of the same, or similar, components.

Powers generally relates to evaluation tools and discloses a performance evaluation system which uses productivity and quality data to evaluate the performance of an individual, group, process or other suitable type of item or operation. (See, e.g., Powers, ¶21.) The system is deployed on a three tiered architecture having a client space, a server application space and a database space. (See, e.g., Powers, ¶22.) Powers discloses a plurality of types of users that provide information to the evaluation system, these users include a sales manager, a product manager and a product agent. (See, e.g., Powers ¶¶ 38, 40 and 44 and Powers Figures 2 and 3.) However, Powers does not disclose as one of these types of users the actual supplier or vendor being evaluated.

Reference A of the PRTM documents discloses that the performance measurement group (PMG), a subsidiary of Pittiglio Rabin Todd & McGrath (the PRTM organization), was selected to undertake a new benchmarking study. The benchmarking study is intended to provide an online subscription series to map companies' supply-chain data to a predefined council model. The subscription series is intended to offer cross industry reports that analyze key drivers of supply-chain performance, key metrics for measuring overall supply-chain performance and drilling down into specific functional areas, comparative performance data from companies of a variety of industries, best practices of top performers and online historical supply-chain benchmarking data for trending purposes (Reference A, pages 4 and 5.) Reference B of the PRTM documents sets forth an apparent marketing document of the PRTM organization which discusses benchmarking studies that PRTM conducts for its clients. Reference C of the PRTM documents discloses a slide presentation which presents a representative analysis of a supply chain scorecard. The metrics include data on delivery performance and quality, flexibility and responsiveness, cost and assets. (Reference C, page 22.)

However, it is respectfully submitted that Powers does not disclose or suggest a method for a customer to evaluate performance of a supplier, much less the specific elements claimed when performing the method. These deficiencies of Powers are not cured by the PRTM documents.

More specifically, Powers and the PRTM documents, taken alone or in combination, do not teach or suggest a method for *a customer to evaluate performance of a supplier where the supplier includes at least one of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider*, much less such a method which includes receiving a first evaluation of the supplier submitted electronically by a team member of a customer of the supplier into a customer website *where the first evaluation is based upon at least one experience of the team member with the supplier*, receiving a second evaluation of the supplier submitted electronically by a team leader of the customer into a customer website *where the second evaluation is based upon at least one experience of the team member with the supplier*, receiving a third evaluation of the supplier submitted electronically by the supplier into a customer website where the supplier is part of an organization that is external to the

customer, and generating an indicia of a supplier's performance based on the first, second and third evaluation where *the supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider*, all as required by claim 1 and as substantially required by claims 9 and 14. Accordingly, claims 1, 9 and 14 are allowable over Powers and the PRTM documents. Claims 2 - 8 depend from claim 1 and are allowable for at least this reason. Claims 10 and 11 depend from claim 9 and are allowable for at least this reason.

Additionally, Powers and the PRTM documents, taken alone or in combination, do not teach or suggest a system for evaluating a supplier which includes a computer system which includes instructions, executable on a computer system, configured to receive a first evaluation submitted electronically by a team member of a customer of the supplier *based upon at least one experience of the team leader with the supplier of a supplier*, receive a second evaluation of a supplier submitted electronically by a team leader of the customer *based upon at least one experience of the team leader with the supplier*, receive a third evaluation of the supplier who is part of an organization that is external to the customer submitted electronically by the supplier and generate an indicia of the performance of the supplier based upon the first, second and third evaluations and *the supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider*, all as required by claim 15. Accordingly, claim 15 is allowable over Powers and the PRTM documents.

Claim 16 depends from claim 15 and is allowable for at least this reason.

Powers and the PRTM documents, taken alone or in combination, do not teach or suggest a method of evaluating the performance of a supplier who is part of an organization that is external to a customer where the performance of the supplier is determined from at least one of a group and the method includes determining a best supplier in the class of suppliers, where *the class of suppliers are those suppliers supplying a component to a manufacturer where the determining is performed by a computer system the supplier is chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider*, all as required by claim 17. Accordingly, claim 17 is allowable over Powers and the PRTM documents. Claims 18 - 20 depend from claim 17 and are allowable for at least this reason.

Powers and the PRTM documents, taken alone or in combination, do not teach or suggest a method of evaluating the performance of a supplier who is part of an organization that is external to a customer where the performance of the supplier is determined from *at least one of a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider*, much less such a method which includes receiving a first evaluation of the supplier submitted electronically by a team member of a customer of the supplier *based upon at least one experience of the team member with the supplier*, receiving a second evaluation of the supplier submitted electronically by

a team leader of the customer *based upon at least one experience of the team leader with the supplier*, and generating an indicia of a supplier's performance based on the first and second evaluation, all as required by claim 21. Accordingly, claim 21 is allowable over Powers and the PRTM documents. Claim 22 depends from claim 21 and is allowable for at least this reason.

In view of the arguments set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, please telephone the undersigned.

I hereby certify that this correspondence is being electronically submitted to the COMMISSIONER FOR PATENTS via EFS on October 10, 2007.

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Respectfully submitted,

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